IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3493 OF 2005

Mr. Shankar Govind Muzumdar ..Petitioner.

Versus

Nau Sanrakshan Co-op.Hsg.Society Ltd., ..Respondent.

Mr. K. Jagose for the Petitioner.

Mr. A.G. Pandit for Respondent.

CORAM : S. A. BOBDE, J.

DATED : 27TH JUNE, 2005.

P.C.:

. Rule. Rule made returnable forthwith. Shri Pandit waives notice for Respondent. Heard by consent.

2. This petition is directed against the order of the Maharashtra State Co-operative Appellate Court, Mumbai, upholding the order dated 10.03.2005 passed by IVth Co-operative Court, Mumbai by which the Respondent Society has been allowed to withdraw the

dispute. The main contention on behalf of the petitioner, which in my view is justified, is that an enquiry under regulation 22 of the Maharashtra State Co-operative Tribunal Regulations, into a question whether the petitioner is a legal representative of Mrs. Jayshree and her husband, has not been held. As a result, the Petitioner has been denied the right to contest proceedings in which he can seek recovery of the flat from which he has been dispossessed. He has been dis-possessed in these very proceedings which have now been allowed to be withdrawn. This question assumes importance in the facts of the case which are as follows :-

3. One Jayshree Muzumdar was a member of the Respondent Society and in possession of a flat. She was expelled from membership during her life time. In a dispute filed by the Society for recovery of possession of the flat allotted to Jayashree, the respondent society impleaded her husband Shrikant as a party to the proceedings upon her demise as her only legal heir vide order dated 20th March, 1989. The society succeeded and recovered possession of the flat. Thereafter, Shrikant filed an appeal in which the award under which the respondent society recovered

possession of the premises from Shrikant, was set aside by the Maharashtra State Appellate Court, Mumbai vide order dated 7.7.1999. This was done on condition of deposit of Rs. 32,400/- by Shrikant.

4. Thereafter, there is some dispute about whether Shrikant complied with the condition on setting aside of the order. However, admittedly, after Shrikant's death, Shankar i.e. Shrikant's brother applied for being impleaded as a legal representative of Shrikant and for continuing the proceedings to resist recovery of the possession by the society.

5. In these circumstances, the society chose to withdraw the dispute, which has been allowed to withdraw by the 4th Co-operative Court and this order has been upheld by the impugned order passed by the Maharashtra State Co-operative Appellate Court.

6. Now one thing is clear that there is no enquiry by the Maharashtra Co-operative Appellate Court as required by the regulation 22 of the Maharashtra State Co-operative Tribunal Regulations - that whether Shankar, is a legal representative of

Shrikant. Regulation 22 reads as follows :-

> 22. Determination of legal representatives.-- If a question arises in any appeal or application, whether a person is or is not the legal representative of a deceased party, such question may be determined by the Tribunal in a summary way after taking evidence, if necessary.

7. The learned counsel for the respondent submits that Shankar could not have been held to be the legal representative and this has been rightly observed by the Co-operative Appellate Court. Whatever be the merits of this contention, the finding of the Co-operative Appellate court ought to have been preceded by an enquiry as contemplated by Regulation 22, which affords an opportunity for parties to lead evidence on this question. It is only if the Petitioner is held to be a legal representative of his brother that he can validly oppose the withdrawal of the dispute in which the Society has recovered possession. It is settled law vide R. Rathinaval Chettiar & Anr. vs. V. Sivaraman & Ors., reported

in (1999) 4 SCC 89, that withdrawal cannot be allowed as a matter of course when by virtue of such withdrawal the vested right of a party to the litigation will be adversely affected. In these circumstances, the impugned order is set aside and the matter is remanded back to the Maharasthra State Co-operative Appellate Court for fresh decision in accordance with law after holding an enquiry in accordance with regulation 22. All contentions of both the parties are left open.

8. The Maharashtra State Co-operative Appellate Court is directed to decide the matter within a period of six months from the date the parties appeared before it. The parties to appear before the Maharashtra State Co-operative Appellate Court on 11th July, 2005.

(S.A.BOBDE,J.)

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